

# LEGAL NEWSLETTER

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- **Mgaloblishvili, Kipiani,  
Dzidziguri (MKD) Law Firm**

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## Laws & Secondary Legislation

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- Pursuant to **the Amendments into the Forestry Code of Georgia**, dated 16 September 2004, the Ministry of Environmental Protection and Natural Resources is vested with authority to issue licenses for use of forests of registered on the State Forestry Fund database. In addition, the Amendments provide that a long-term forestry use shall be subject to a separate agreement entered among a winner in tender or auction and the Ministry of Environmental Protection and Natural Resources. Apart from this, use of forests within the protected territories shall also be regulated by the Law of Georgia on the System of Protected Territories.
- **Amendments to the Law on Natural Resources of Georgia**, dated 16 September 2004, introduces two categories of natural resources, which are: (1) natural resources of state importance, and (2) natural resources of local importance. Additionally, the said amendments provide for a new license format and respective terms and conditions.
- **Amendments to the Law on Biological and Radiation Safety**, dated 16 September 2004, stipulate that a respective license shall constitute the only valid basis for biological and radiation activities in Georgia. Such a license may be issued both to physical and legal persons and the amendments refer to some mandatory provisions which shall be provided in a license. Equally, and under Amendments to the Law on Licensing for Geological Activities, dated 16 September 2004, any geological activities in Georgia shall be conducted only as a result of obtaining a relevant license. Such a license may be issued both to physical and legal persons, however, the amendments explicitly prohibit transfer of a license from an authorized license-holder to a third party.
- According to **the Order No 835 of the Minister of Justice of Georgia on Regulations for the Legal Entity of Public Law-the National Agency of Public Registry**, dated 19 July 2004, the National Agency of Public Registry is the legal entity

## Laws & Secondary Legislation

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- of public law at the Ministry of Justice of Georgia, which operates on a basis of the Law of Georgia on State Registry. Its scope of authority includes registering contractual arrangements pursuant to Georgian Civil Code in respect of rights over immovable and movable property as well as evidencing such rights. The National Agency of Public Registry is also in charge of cadastre work and providing of unrestricted access to public registry information.
- **Order No 1102 of the Minister of Justice of Georgia on Temporary Provisions for Registration of Rights over Movable Property**, dated 10 September 2004, has finally introduced a separate set of procedures for registering security rights (ie., pledge) over movable property (previously, the same procedures were applicable to registration of rights both over immovable and movable property). Thus, Georgian Civil Code differentiates between taking security in immovable property (a **hypothec**) and taking
- security in movable property (a **pledge**), where a security interest in movable property (including appurtenances to immovable property) is given by way of pledge which must be granted separately from a hypothec over land and fixtures. In its turn, Georgian Civil Code does not define movable property which is recognized to be all property other than immovable property. A pledge may also be created to be a liability right over movable property and therefore must be secured by way of pledge. Under the Provisions, the statutory term for registering respective rights shall be five working days from filing an application, although, the Provisions do also explicitly list cases for suspending or rejecting a request for registration of rights.
- Signing of **the Agreement between Georgia and the Republic of Austria for the Avoidance of Double Taxation on Income and Capital** was sanctioned by the Presidential Order, dated October 4, 2004.

# Policy Reform

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## **Reform in the Antimonopoly Service of Georgia**

- Register of Monopolists is to be abolished soon by the incumbent administration of the Antimonopoly Service of Georgia.
- New head of the Service considers that there are no real monopolists in the Georgian market and the state should abstain from intervening in market operation, including pricing policy. The latter must be determined by the market itself.
- Pursuant to the new statute of the Service (which will define its competence and functions) the tasks of the Service will primarily include removing barriers to free trade rather than controlling activities of undertakings. The Service will be merged with the State Commission of Prices and the number of personnel will be reduced from fifty to seven.
- Concept of the newly created Service for Free Trade and Competition will be presented by the Ministry of Economy of Georgia, Mr. Kakha Bendukidze. During the last three years the largest Georgian producers have been placed in the Registered of Monopolists. Such companies had to comply with specific requirements of the Service, *inter alia* in issuing special invoices, where production resale prices where calculated/determined. Such practice aimed at avoiding abuse of the dominant position by the monopolist undertakings.

# Case Law

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- Joint-stock company Shavlego brought a lawsuit before the court against a limited liability company Aromati with the request of nullifying the contract regarding the lease of tea factory, claiming that the contract was signed by the former director of Shavlego without previous consent from the Supervisory Board of the company.
- The plaintiff refers to the article 55.9 of the Law on Entrepreneurs of Georgia, according to which, the director is eligible for signing certain contracts with the consent of the Supervisory Board. Also, with respect to the article 56 of the Civil Code of Georgia, contracts without necessary consent are considered to be void.
- The trial court agreed with the action brought in by the plaintiff and considered the disputed contract to be void.
- The appellate court reversed the trial court's decision and with the new judgment did not grant the plaintiff relief requested. The appellate court held that absence of the consent of the Supervisory Board did not constitute a basis for avoiding a contract.
- The Supreme Court of Georgia, chamber of civil, entrepreneur and bankruptcy cases with its decision on March 4, 2002 upheld the Appellate court's decision.
- The Supreme Court of Georgia, referring to articles 9.4 and 55.9 of the Law on Entrepreneurs of Georgia claims the following: "Third party does not have to figure out whether the director is eligible to sign a contract. If the director signs a contract that he is not entitled to, he will be held responsible before the company according to article 9.7 of the Law on Entrepreneurs and the issue of whether the contract is void, will not rise."

Mgaloblishvili, Kipiani, Dzidziguri (MKD) law firm was founded in November 1996. It operates as a general partnership and is recognized as well-established, respected leading law firm in Georgia with national, regional and international clients.



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***Disclaimer:*** This Legal update is written as a general guide only. It is not intended to contain definitive legal advice which should be sought as appropriate in relation to a particular matter. If you would like further information on the issues reported here, please contact Mr. Mikheil Gogeshvili at: [mgogeshvili@mkd-law.com](mailto:mgogeshvili@mkd-law.com)

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